

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

CARLA RENA WILLIAMS

PLAINTIFF

v.

CIVIL CASE NO. 4:17-CV-164-RP

**NANCY A. BERRYHILL, ACTING
COMMISSIONER OF SOCIAL SECURITY**

DEFENDANT

FINAL JUDGMENT

This cause is before the Court on the Plaintiff's complaint pursuant to 42 U.S.C. § 405(g) for judicial review of an unfavorable final decision of the Commissioner of the Social Security Administration regarding an application for a period of disability, disability insurance benefits and supplemental security income. The parties have consented to entry of final judgment by the United States Magistrate Judge under the provisions of 28 U.S.C. § 636(c), with any appeal to the Court of Appeals for the Fifth Circuit. The Court, having reviewed the record, the administrative transcript, the briefs of the parties, and the applicable law and having heard oral argument, finds as follows:

For the reasons announced by the Court on the record at the conclusion of the parties' oral argument during a hearing held in this matter today, the Court finds the Commissioner's decision is not supported by substantial evidence. The Commissioner's final decision denying benefits includes the Appeals Council's decision denying the plaintiff's request for review, and the record before the Appeals Council constitutes part of the record upon which the final decision is based. *Higginbotham v. Barnhart*, 404 F.3d 332, 337 (5th Cir. 2005). In denying the plaintiff's request for review, the Appeals Council failed to give meaningful consideration to the plaintiff's new 100% disability rating by the VA. While the regulations do not require the Appeals Council to provide a discussion of newly submitted evidence or give reasons for

denying review, judicial review of the Commissioner's decision is difficult, if not impossible, when the Appeals Council provides no discussion of relevant, new evidence. *Sun v. Colvin*, 793 F.3d 502, 511 (5th Cir. 2015). A VA rating of 100% disability, although not binding on the Commissioner, is evidence that should be considered and is entitled to great weight. *Loza v. Apfel*, 219 F.3d 378, 394-395 (5th Cir. 2000); *Rodriguez v. Schweiker*, 640 F.2d 682, 686 (5th Cir. 1981). Although the relative weight to be given such evidence will vary depending upon the factual circumstances of each case, any decision giving such evidence less than "great weight" must be supported by an adequate explanation of the valid reasons for doing so. *Chambliss v. Massanari*, 269 F.3d 520, 522 (5th Cir. 2001). The Commissioner's decision in this case is wholly insufficient in this regard. Therefore, this case is remanded with instructions to receive and consider the subject VA disability determination and to determine the proper weight to be afforded to it.

SO ORDERED, this, the 27th day of June, 2018.

/s/ Roy Percy
UNITED STATES MAGISTRATE JUDGE